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09/845,259	05/01/2001	Kazuhiro Ogura	016907/1227	2842

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EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/845,259

**Applicant(s)**

OGURA ET AL.

**Examiner**

Andrew J. Fischer

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-25 is/are pending in the application.
- 4a) Of the above claim(s) 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/1/01 & 7/19/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Acknowledgements***

1. Applicants' preliminary amendment filed March 18, 2004 is again acknowledged. Accordingly, claims 1-13 and 15-25 remain pending.

2. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

### ***Restriction***

3. Applicants' election of Group I (claims 1-13 and 15-24) in the reply filed on May 25, 2004 is acknowledged. Because Applicants did not distinctly and specifically point out the supposed errors in the restriction requirement in accordance with 37 C.F.R. §1.111(b), the election has been treated as an election without traverse. See also MPEP §818.03(a).

4. Claim 25 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse in the reply filed on May 25, 2004.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 C.F.R. §1.75(d)(1), MPEP §608.01(o), and MPEP §2181. The claims are replete with these errors. Some examples follow:

a. The "means for reading out the print data" as recited in claims 1 and 11.

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- b. The “means for displaying the advertisement” as recited in claims 1, 10, 11, 13, 18, 20, and 22
- c. The “means for transmitting image data” as recited in claim 10.
- d. The “means for updating the database as recited in at least claim 22.

***Claim Rejections - 35 USC §112 2<sup>nd</sup> Paragraph***

6. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-13 and 15-24 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are replete with errors. Some Examples follow.

8. In claims 7-13, 15-17, and 20, the phrase “on which necessary items have been filled in” is indefinite. In particular, it is unclear what are necessary items.

9. If Applicants desire to invoke 35 U.S.C. §112 6<sup>th</sup> paragraph in at least claims 1, 10, 11, 13, 18, 20, and 22, the claims are indefinite; Applicants have failed to clearly link and associate the “means for displaying the advertisement” to any corresponding structure. Should Applicants desired not to invoke 35 U.S.C. §112 6<sup>th</sup> paragraph, this particular 35 U.S.C. §112, 2<sup>nd</sup> paragraph will be withdrawn.

***Claim Rejections - 35 USC §102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States. . . .

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-13 and 15-24, as understood by the Examiner, are rejected under 35

U.S.C. §102(b) as being anticipated by Dejaeger et. al. (EP 0 991 006 A2)(“Dejaeger ‘006).

Dejaeger ‘006 discloses a POS system having: a terminal device (15) having a display means (36), instruction means (software running the system), processing means (the CPU or processor of the terminal device); a center (see figure 1, everything outside of the ‘checkout areas of the store’) having a first transmission means (44) and a database (46); a printer which prints desired data based upon the detailed information of the advertisement (inherent: see *e.g.* the coupon in Figure 4); the database stores detailed information; the processing means reads the advertising data from the center).

### ***Claim Rejections - 35 USC §103***

12. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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13. Claims 1-13 and 15-24, as understood by the Examiner, are rejected under 35 U.S.C. §103(a) as being unpatentable over Dejaeger '006 in view of Yanagisawa et. al. (EP 1 035 527 A2)("Yanagisawa '527").<sup>1</sup> It is the Examiner's principle position that the claims are anticipated because, as noted above, the type of data printed is inherent.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Dejaeger '006 as taught by Yanagisawa '527 to include the claimed data. Such a modification would have allowed convenience stores to get involved with advertising on receipts.

Moreover, the missing elements in Dejaeger '006 are only found in the nonfunctional descriptive material and are not functionally involved in the claimed printed material (i.e. the content of what is printed does not effect the structure of the claimed invention). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the content of Dejaeger '006 with any type of content. The descriptive material will not distinguish the claimed invention over the prior art in terms of patentability because the data does not functionally relate to the steps in the method. See *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). See also MPEP §2106 IV B.

14. After careful review of the specification and prosecution history, the Examiner is unaware of any desire—either expressly or implicitly—by Applicants to be their own lexicographer and to define a claim term to have a meaning other than its ordinary and accustomed meaning. Therefore, the Examiner starts with the heavy presumption that all claim

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<sup>1</sup> See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of

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limitations are given their ordinary and accustomed meaning. See *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001) (“[T]here is a heavy presumption in favor of the ordinary meaning of claim language as understood by one of ordinary skill in the art.”); *CCS Fitness Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366, 62 USPQ2d 1658, 1662 (Fed. Cir. 2002) (There is a “heavy presumption that a claim term carries its ordinary and customary meaning.”). See also MPEP §2111.01 and *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).<sup>2</sup>

In accordance with the ordinary and accustomed meaning presumption, during examination the claims are interpreted with their “broadest reasonable interpretation . . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also MPEP §2111.

However, if Applicants disagree with the Examiner and have either (a) already used lexicography or (b) wish to use lexicography and therefore (under either (a) or (b)) desire a claim limitation to have a meaning other than its ordinary and accustomed meaning, the Examiner respectfully requests Applicants in their next response to expressly indicate<sup>3</sup> the claim limitation

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inherency is present in the anticipation rejection.

<sup>2</sup> It is the Examiner’s position that “plain meaning” and “ordinary and accustomed meaning” are synonymous. See e.g. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (“[A]ll terms in a patent claim are to be given their plain, ordinary and accustomed meaning . . .”).

<sup>3</sup> “Absent an *express intent* to impart a novel meaning, terms in a claim are to be given their ordinary and accustomed meaning. [Emphasis added.]” *Wenger Manufacturing Inc. v. Coating Mach. Sys., Inc.*, 239 F.3d 1225, 1232, 57 USPQ2d 1679, 1684 (Fed. Cir. 2001) (citations and quotations omitted). “In the absence of an *express intent* to impart a novel meaning to claim terms, an inventor’s claim terms take on their ordinary meaning. We indulge a heavy presumption that a claim term carries its ordinary and customary meaning. [Emphasis added.]” *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1380 (Fed. Cir. 2002) (citations and quotations omitted).

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at issue and to show where in the specification or prosecution history the limitation is defined.

Such definitions must be clearly stated in the specification or file history. *Bell Atlantic*, 262 F.3d at 1268, 59 USPQ2d at 1870, (“[I]n redefining the meaning of particular claim terms away from the ordinary meaning, the intrinsic evidence must ‘clearly set forth’ or ‘clearly redefine’ a claim term so as to put one reasonably skilled in the art on notice that the patentee intended to so redefine the claim term”).<sup>4</sup> The Examiner cautions that no new matter is allowed.

Applicants are reminded that failure by Applicants in their next response to properly traverse this issue in accordance with 37 C.F.R. §1.111(b) or to be non-responsive to this issue entirely will be considered a desire by Applicants to forgo lexicography in this application and to continue having the claims interpreted with their broadest reasonable interpretation.<sup>5</sup> Additionally, it is the Examiner’s position that the above requirements are reasonable.<sup>6</sup> Unless expressly noted

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<sup>4</sup> See also *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d 1573, 1576 (Fed. Cir. 1996), (“[A] patentee may choose to be his own lexicographer and use terms in a manner other than their ordinary meaning, *as long as* the special definition of the term is *clearly stated* in the patent specification or file history. [Emphasis added.]”); *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998) (“Such special meaning, however, must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention.”). See also MPEP §2111.01, subsection titled “Applicant May Be Own Lexicographer” and MPEP §2173.05(a) titled “New Terminology.”

<sup>5</sup> See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]”

<sup>6</sup> The Examiner’s requirements on this matter are reasonable on at least two separate and independent grounds. First, the Examiner’s requirements are simply an express request for clarification of how Applicants intend their claims to be interpreted so that lexicography (or even an *attempt* at lexicography) by Applicants is not inadvertently overlooked by the Examiner. Second, the requirements are reasonable in view of the USPTO’s goals of compact prosecution, productivity with particular emphasis on reductions in both pendency and cycle time, and other goals as outlined in the USPTO’s The 21<sup>st</sup> Century Strategic Plan, February 3, 2003 available at [www.uspto.gov/web/offices/com/strat21/index.htm](http://www.uspto.gov/web/offices/com/strat21/index.htm) (last accessed August 29, 2004).



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otherwise by the Examiner, the preceding discussion on claim interpretation principles applies to all examined claims currently pending.

15. To the extent that the Examiner's interpretations are in dispute with Applicants' interpretations, the Examiner hereby adopts the following definitions—under the broadest reasonable interpretation standard—in all his claim interpretations.<sup>7</sup> Moreover, while the following list is provided in accordance with *In re Morris*, the definitions are a guide to claim terminology since claim terms must be interpreted in context of the surrounding claim language.<sup>8</sup> Finally, the following list is not intended to be exhaustive in any way:

**Computer:** “Any machine that does three things: accepts structured input, processes it according to prescribed rules, and produces the results as output.” Computer Dictionary, 3rd Edition, Microsoft Press, Redmond, WA, 1997.<sup>9</sup> **Client:** “3. On a local area network or Internet, a computer that accesses shared network resources provided by another computer (called a

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<sup>7</sup> While most definitions are cited because these terms are found in the claims, the Examiner may have provided additional definitions to help interpret words, phrases, or concepts found in the definitions themselves or in the prior art.

<sup>8</sup> See e.g. *Brookhill-Wilk 1 LLC v. Intuitive Surgical Inc.*, 334 F.3d 1294, 1300, 67 USPQ2d 1132, 1137 (Fed. Cir. 2003) (abstract dictionary definitions are not alone determinative; “resort must always be made to the surrounding text of the claims in question”).

<sup>9</sup> Based upon Applicants' disclosure, the art of record, and the knowledge of one of ordinary skill in this art as determined by the factors discussed in MPEP §2141.03 (where practical), the Examiner finds that the *Microsoft Press Computer Dictionary* is an appropriate technical dictionary known to be used by one of ordinary skill in this art. See e.g. *Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the *Microsoft Press Computer Dictionary* (3d ed.) as “a technical dictionary” to define the term “flag.” See also *In re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971)(noting that its appropriate to use technical dictionaries in order to ascertain the meaning of a term of art) and MPEP §2173.05(a) titled ‘New Terminology.’

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server).” *Id.* *Server*: “2. On the Internet or other network, a computer or program that responds to commands from a client.” *Id.*

**Data** “Plural of the Latin datum, meaning an item of information. In practice, data is often used for the singular as well as plural the form of the noun.” *Id.*

**Manage** “1 : to handle or direct with a degree of skill . . . 1 a : to direct or carry on business or affairs” Merriam-Webster’s Collegiate Dictionary, 10<sup>th</sup> Edition, Merriam-Webster Inc., Springfield, M.A., 1997.

**Information** “2 a . . . (3): FACTS, DATA” *Id.*

16. With respect to claims 1-13 and 15-24, the Examiner respectfully reminds Applicants that: “A system is an apparatus.” *Ex parte Fressola* 27 USPQ2d 1608, 1611 (B.P.A.I. 1993)(citations omitted). Additionally, “[c]laims in apparatus form conventionally fall into the 35 U.S.C. §101 statutory category of a ‘machine.’” *Ex parte Donner*, 53 USPQ2d 1699, 1701 (B.P.A.I. 1999)(unpublished), (Paper No. 34, page 5, issued as U.S. Patent 5,999,907). Therefore, it is the Examiner’s position that Applicants’ system claims are “product,” “apparatus,” or more specifically, “machine” claims.<sup>10</sup>

17. Because Applicants have drafted “machine claims, Applicants are also reminded that functional recitations using the word “for,” “adapted to,” or other functional terms (*e.g.* see claim 1 which recites “for performing sales management of a commodity purchased by a customer . . . terminal device”) have been considered but are given little patentable weight<sup>11</sup>

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<sup>10</sup> Products may be either machines, manufactures, or compositions of matter. MPEP §2106 IV B. 2 (a).

<sup>11</sup> See *e.g. In re Gulack*, 703 F.2d 1381, 217 USPQ 401, 404 (Fed. Cir. 1983)(stating that although all limitations must be considered, not all limitations are entitled to patentable weight.).

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because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use in a product claim must result in a structural difference between the claimed product and the prior art in order to patentably distinguish the claimed product from the prior art. If the prior art structure is capable of performing the intended use, then it reads on the claimed limitation. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). See also MPEP §§ 2114 and 2115. Unless expressly noted otherwise by the Examiner, the claim interpretation principles in this paragraph apply to all examined claims and their claim terms which are currently pending.

18. Although Applicants use “means for” in the claims (*e.g.* claim 1 recites “means for reading out the print data of the displayed detailed information”), it is the Examiner’s position that the “means for” phrases do not invoke 35 U.S.C. 112 6<sup>th</sup> paragraph. If Applicants concur, the Examiner respectfully requests Applicants to either amend the claims to remove all instances of “means for” from the claims, or to explicitly state on the record why 35 U.S.C. 112 6<sup>th</sup> paragraph should not be invoked. Alternatively, if Applicants desire to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph, the Examiner respectfully requests Applicants to expressly state their desire on the record. Upon receiving such express invocation of 35 U.S.C. 112 6<sup>th</sup> paragraph, the “means for” phrases will be interpreted as set forth in the *Supplemental Examination Guidelines for Determining the Applicability of 35 USC 112 6<sup>th</sup>*.<sup>12</sup> Failure by Applicants in their next response to also address the 35 U.S.C. 112 6<sup>th</sup> paragraph issues in accordance with 37 C.F.R. §1.111(b) or to be non-

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responsive to this issue entirely will be considered a desire by Applicants NOT to invoke 35 U.S.C. 112 6<sup>th</sup> paragraph. The preceding discussion on 35 U.S.C. 112 6<sup>th</sup> paragraph applies to all examined claims currently pending.

### *Conclusion*

19. The following references are considered pertinent to Applicants' disclosure: Kolls (U.S. 6,684,197 B1); Peek (U.S. 6,614,551 B1); Kolls (6,606,602 B1); Dejaeger et. al. (U.S. 6,456,981 B1); Shaw et. al. (U.S. 6,199,106 B1); Ohmura (U.S. 6,138,149 A); Goldsmith (U.S. 6,064,990 A); Fisher et. al. (U.S. 6,047,264); Moraes (U.S. 6,014,502 A); Chen et. al. (U.S. 5,590,197 A); Vajk (U.S. 5,265,033 A); Fujitsu General (JP 2000 113329 A); Fujimoto (JP 2000 59227 A); and NEC Corp. (JP 09147241 A).

20. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8<sup>th</sup> Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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<sup>12</sup> Federal Register, Vol. 65, No. 120, June 21, 2000.

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

22. It is the Examiner's factual determination that all limitations in claims 1-13 and 15-24 have been considered and are either directly disclosed or inherent in the references as discussed above. Furthermore, the inherent features are established by a preponderance of the evidence. *In re Epstein*, 32 F.3d 1559, 1564, 31 USPQ2d 1817, 1820 (Fed. Cir. 1994) ("Preponderance of the evidence is the standard that must be met by the PTO in making rejections." (citations and quotations omitted)). The preceding discussion in this paragraph regarding the standard for claim rejections applies to all examined claims currently pending.

23. In accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the references How Computers Work Millennium Ed. by Ron White; How Networks Work, Millennium Ed. by Frank J. Derfler et. al.; and How the Internet Works, Millennium Ed. by Preston Gralla are additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Each reference is cited in its entirety. Moreover, because these three references are directed towards beginners (see e.g. "User Level Beginning . . ."), because of the references' basic content (which is self-evident upon review of the references), and after further review of the entire application and all the art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that these three references are primarily directed towards those of low skill in this art. Because these three references are directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within these three references.

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24. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. If Applicants disagree with any factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>13</sup> the Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. To respond to this Office Action by facsimile, fax to (703) 872-9306.



Andrew J. Fischer  
Primary Examiner  
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AJF

August 29, 2004

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<sup>13</sup> *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.